

INTERIM ELECTRIC PROCUREMENT RULES ABSTENTION STATEMENT OF CARL WOOD

There is no acceptable justification for a majority of my colleagues to force a vote on this matter today. While the need to place interim procurement rules is urgent, that need does not arise to the status of an emergency. The Commission is simply not ready to vote. There are holes in this decision and unanswered questions that must be addressed. With an extension of a few days, or even a single day, we could have made this a much better order. There is no reason to believe that a delay of such length would have any impact on the utilities' ability to buy power in the next four months.

I have presented concrete proposals for producing a decision that could gain broader support. Given the opportunity, there are real problems with the Peevey order that I would like to work to resolve.

First, there is no need to allow the utilities to tie down 100% of their residual net short through long-term contracts as part of this interim process. The Commission will establish long-term procurement this fall. Removal of all the flexibility from the utilities' procurement portfolios for as much as the next five years is hasty and unnecessary. Due to existing contracts, the utilities are already almost entirely sheltered from the whims of the spot market. Allowing utilities to tie down 65% of what is left will reduce their spot market exposure to levels that are likely lower than those the utilities faced before restructuring. There is no compelling reason to go further than that when it could occur at the expense of long-term procurement policy.

Second, we should adopt the SDG&E's 50-50 proposal which would limit the amount of the interim contracts that could last for longer than a year. This would further support our development and implementation of a long-term procurement policy.

Third, the Commission cannot meaningfully review proposed contracts in the time frame envisioned in any of the orders before us today. We should admit this and revise our process so that it does not rely on the pretense that we can provide considered pre-approval. If one accepts the premise that the utilities need upfront assurances, even though they have been able to procure fuel and build facilities without them for decades, then we should provide only such assurances as we can without shifting the risk of unreasonable conduct onto the ratepayers. In a short time, we can assess whether the contract price is in the ballpark and whether the contract terms are reasonable. What we cannot ensure within the short-term is that the contracting utility has appropriately exercised its fiduciary obligation to its ratepayers by refraining from any direct or indirect self-dealing. Evidence of this type of behavior may not become evident for months or years.

For these reasons, I would propose that we only offer approval of price and contract provisions and that the utilities remain liable not only for the reasonableness of its contract management, but also for its behavior in forming the bargain. If, for instance, it later comes to light that a utility agreed to a more expensive or otherwise less favorable contract in exchange for an explicit or even tacit understanding that the seller would later buy from a utility affiliate, the Commission should be able to find the utility imprudent and order refunds. What the Commission would agree not to do would be to look back and question whether the price was reasonable at the time, or whether the contract provisions were fair. I sought time to pursue this option and to work on specific language.

In addition, the Commission cannot possibly develop alternatives to a utility's procurement options in the time available. The majority opinion is ambiguous as to whether it commits the Commission do to so. I suggest that all parties concerned interpret that ambiguity to mean that there is no such requirement. If there is, we should immediately modify the order to remove it. Such a requirement would box the Commission into approving whatever the utility

proposes, since there is no practical way for the Commission to identify and approve alternatives in the time available.

Further, this hasty decision does not sufficiently explain how its provisions would work. For instance, it calls for the establishment of Procurement Review Groups without setting forth a procedure for selecting members and gaining approval from the Commission for the composition of the groups. Commission approval is critical, if the Commission is to rely in any way on the work those groups do in screening the utilities' procurement plans. If the utilities can select the members, there is very little opportunity for its members to retain arms-length separation.

Finally, we need to look further and harder at the way the various alternates handle renewables and QFs. I agree that we should address them, since any interim procurement process will have an impact on their deployment. However, I think that this decision goes too far in both instances. I am not persuaded that we need to open up the gate to extended Standard Offer 1 contracts in order to fulfill our obligations under PURPA. I am also concerned that my colleagues may be hastily locking in a program for renewables procurement without fully understanding its consequences. Commissioner Peevey substantially changed his language on this subject only hours before the vote. I have not had an opportunity to consider fully the current version and to consider its appropriateness in light of the record in the proceeding.

It is wrong, and often unlawful, to approve a decision that we know is not fully baked. I am concerned that we are increasingly going down that path, however, simply because a majority of the Commissioners want to cut off debate. Because three commissioners have chosen to deny me an opportunity to complete

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deliberation and drafting without being able to justify their action on the basis of an emergency, and because none of the draft orders before the Commission is ready for approval, I abstain from voting, and do so under protest.

/s/ CARL WOOD

Carl Wood
Commissioner

San Francisco, California
August 22, 2002